

233

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-24781-2018 (O&M)
Date of decision : 16.02.2023**

Jaswinder Singh

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Ranjivan Singh, Advocate with
Mr. Risham Raag Singh, Advocate and
Mr. Himmat Singh Sidhu, Advocate
for the petitioner.

Mr. Rajesh Mehta, Addl. A.G., Punjab.

Mr. Pawan Sandhu, Advocate
for respondent No.3.

PANKAJ JAIN, J. (ORAL)

Challenge is to the order dated 01.06.2017 (Annexure P-7) passed by respondent No.1-whereby the petitioner has been saddled with the major punishment of stoppage of two annual increments with future effects reviewing the order dated 14.08.2015, whereby the charge-sheet against the petitioner was ordered to be dropped. Thereafter, vide order dated 01.06.2017, order dated 14.08.2015 was reviewed and the petitioner along with other employees were punished. The petitioner was awarded major punishment of stoppage of two annual increments with future effect.

The petitioner while posted as Building Inspector with the
Municipal Corporation Patiala was served with chargesheet dated

20.02.2009. The petitioner was held guilty in the inquiry report. However, Secretary Department of Local Government from Punjab vide order dated 14.08.2015 that is the Punishing Authority ordered that the charge-sheet issued to the officers including to the petitioner dated 20.02.2009, be dropped.

The petitioner claims that the said order was never communicated to him and rather was passed at his back. It was only when he was debarred from consideration for promotional post that he came to know of such order and applied for the same under the Right to Information.

Counsel for the petitioner contends that order Annexure P-7 cannot be sustained for having been passed without affording any opportunity of hearing to the petitioner. He further claims that there is no power vested for reviewing such order beyond period of six months. The authority having been rendered *functus officio* beyond 06 months of passing of the order dated 14.08.2015 Annexure P-3. The order dated 01.06.2017, is without jurisdiction.

Per contra, counsel for the respondent submits that there were other officers facing allegations and the same were pending consideration before the authorities. After a holistic view was taken, order Annexure P-7, was passed. It is claimed that till whole of the issue was decided, the issue with respect to misconduct of the petitioner also cannot be said to have been decided finally by way of Annexure P-3 dated 14.08.2015. He further claims that petitioner after having issued notice prior to passing of Annexure P-7 dated 27.12.2016, participated in the said proceedings. He having submitted to the jurisdiction of the

reviewing authority, cannot be allowed to turn back and say that the order was passed without jurisdiction.

I have heard counsel for the parties and have gone through the record of the case.

The facts are being matter of records are not much in dispute. A bare perusal of Annexure P-3 reveals that the same is unambiguous and explicit. The only inference that can be drawn is that the authority ordered to drop the charge-sheet against the petitioner. The same also stands recognized in the impugned order Annexure P-7 as the authority, while passing Annexure P-7, uses the expression of review. Thus, the contention raised by the counsel for the State that it is not a case of review and the matter was not finally closed vide Annexure P-3, is misplaced and sans merit and is, thus, rejected.

The issue before this Court is as to whether the authority was well within its power to review Annexure P-3 and pass the order Annexure P-7. It is the Punjab Civil Services (Punishment and Appeal) Rules, 1970, which will be applicable to the present situation. Rule 21 thereof provides for the power of review. The same reads as under;-

"Rule 21

Review - (1) Notwithstanding anything contained in these rules.

(i) the Governor; or

(ii) the appellate authority, within six months of the date of the order proposed to be reviewed; or

(iii) any other authority, specified in this behalf by the Governor by a general or special order, and within such time as may be prescribed order in such general or special order

may at any time, either on his or its own motion or otherwise call for the records of any inquiry and review any order made under these rules or under the rules repealed by Rule 25 from which an appeal is allowed, but from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may -

- (a) confirm, modify or set aside the order; or*
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or imposed any penalty where no penalty has been imposed; or*
- (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances if the case; or*
- (d) pass such other orders as it may deem fit:*

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed of making a representation to impose any of the specified in clauses (v) to (ix) or Rule 5 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in rule and except after consultation with the Commission where such consultation is necessary."

There is no denial that power of review is provided under the Rule, however, the same vests with the Governor or the Appellate Authority or any other authority specified in this behalf by the Governor, by a general or special order. Impugned order Annexure P-7 does not fall

in any of the aforesaid category. The same authority reviewed Annexure P-3 by way of Annexure P-7. Apart from that even if the authority passing Annexure P-7 being higher in rank his additional Chief Secretary is taken to be Appellate Authority, the same could have reviewed the order only within a period of six months. Beyond six months even the Appellate Authority becomes *functus officio* and was not within its power to assume the jurisdiction of review.

In view of aforesaid, this Court is of the considered opinion that Annexure P-7 cannot be sustained and is hereby ordered to be quashed. The petitioner is held entitled for all benefits including for promotion from the date, persons junior to the petitioner, have been promoted.

Respondents are directed to release the benefits of the petitioner within a period of twelve weeks from the date of receipt of certified copy of this order.

Disposed off, accordingly.

16.02.2023

ps-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No